

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 494 226 and MERCHANT MARINER'S DOCUMENT
Issued to: Donald Eugene Hughes Z-593-142

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2224

Donald Eugene Hughes

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1

By order dated 14 November 1979, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's documents outright for three months, plus three additional months for violation of probation imposed in a prior proceeding, upon finding him guilty of negligence. The specifications found proved alleged that while serving as Pilot on board the M/V CHIGUSA MARU under authority of the license above captioned, on or about 6 July 1979, while said vessel was enroute from San Francisco Bay to Pittsburgh, California, Appellant: (1) failed to maintain control of said vessel, resulting in its grounding; and (2) failed to maintain control of said vessel, resulting in a collision with and destruction of an established U.S. aid to navigation.

The hearing was held at San Francisco on 27 September and 3, 4, 5, and 31 October 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specifications.

The Investigating Officer introduced in evidence the testimony of three witnesses and five exhibits.

In defense, Appellant offered in evidence the testimony of two witnesses.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and each specification had been proved. He then served a written order on Appellant suspending all licenses issued to him for a period of six months.

The entire decision was served on 16 November 1979. Appeal was timely filed on 16 November 1979 and perfected on 26 February

1980.

FINDINGS OF FACT

On 6 July 1979, Appellant was serving as Pilot on board M/V CHIGUSA MARU while the vessel was underway within the waters of the Sacramento Port District in California. Appellant at all material times was a member of the California Inland Pilot's Association. M/V CHIGUSA MARU is a foreign-flag break bulk carrier of Japanese registry. The State of California has enacted legislation to control exclusively pilotage of foreign-flag vessels within its waters as appears in California Harbor & Navigation Code, Section 6200 et seq. In light of my disposition of Appellant's first ground for appeal, more detailed findings of fact are unnecessary.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant urges several grounds for reversal, but due to my determination on the jurisdictional issue posed in this case, detailed consideration of all the issues asserted is unnecessary.

APPEARANCE: Derby, Cook, Quinby & Tweedt of San Francisco, California, by Robert E. Perkins, Esq.

OPINION

Appellant contends that the Coast Guard lacked jurisdiction to proceed because he was acting under the exclusive jurisdiction of the State of California which regulates pilots of foreign flag merchant vessels in state waters. I accept his contention.

Evidence in the record demonstrates that the Investigating Officer asserted that possession of a Coast Guard license was "required in fact" as a condition of employment. However, as a result of the court's holding in Soriano v. U.S., 494 F. 2d 681 (9th Cir. 1974), "the 'condition of employment' test set out in 46 CFR 5.01-35 does not apply to the case of a State pilot acting pursuant to State authority under 46 U.S.C. 211." Decision On Appeal No. 2094. The court in Soriano was concerned with the Coast Guard's impermissible extension of its authority to regulate pilots into an area traditionally reserved for state regulation, as codified at 46 U.S.C. 211. The all encompassing legislation enacted by the State of California to control pilotage in San Francisco Bay area precludes the Coast Guard from stepping into the area of State pilot regulation. Hence I conclude that Appellant was not required to hold a Coast Guard issued license as a "condition of employment," as contemplated by 46 CFR 5.01-35.

CONCLUSION

From the foregoing discussion and authorities it is clear that the order entered by the Administrative Law Judge can not be permitted to stand.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 14 November 1979, is VACATED; and the charge DISMISSED.

R. H. SCARBOROUGH
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 24th day of 1980.